



City of Columbus

Office of City Clerk
90 West Broad Street
Columbus OH 43215-9015
columbuscitycouncil.org

Legislation Text

File #: 3316-2018, **Version:** 2

This ordinance is intended to update and clarify retaliatory eviction **criminal code section** for the City of Columbus. City agencies have expressed to City Council that the existing law is outdated and difficult to enforce due to lack of definitions as well as a lack of a burden-shifting scheme which would provide guidance to the City, tenants, landlords and the court.

Although the City of Columbus has a process in place for investigating retaliatory evictions, under the existing law, any reason that the landlord proffers to justify the action taken against the tenant can serve as a defense. Under the proposed change, the court would ultimately decide if the proffered reason is a valid defense.

FISCAL IMPACT: No funding is required for this legislation.

To amend Section 4509.07 of the Columbus City Codes, in order to address retaliatory eviction language.

WHEREAS, it is necessary to clarify and update the language pertaining to retaliatory evictions in order to protect tenants who make a good faith complaint about a housing, building, health or other code violation to a government authority or to a person in control of the rental property where the tenant resides; and,

WHEREAS, City Council recognizes the challenge before the City of Columbus ~~and the tenants~~ in demonstrating that the action taken by the landlord or a person in control of the premises is in fact in retaliation; and,

WHEREAS, City Council finds that a burden-shifting scheme would allow the City of Columbus ~~or a tenant in a civil matter~~ to ensure that tenants are protected against retaliatory action while also allowing the landlord or the person in control of the property to be heard and demonstrate that the action taken was not retaliatory; and,

WHEREAS, City Council recognizes the need to provide definitions and clarity on the subject of what types of actions are to be considered retaliatory; and,

WHEREAS, ~~consistent with O.R.C. 5321.02, City Council finds that it is appropriate to allow tenants to raise retaliatory action as a defense to an action by a landlord who is seeking to recover possession of the premises; now, therefore,~~

WHEREAS, City Council acknowledges that tenants have a right to occupy safe housing, and as such, any provision of a lease agreement that allows the parties to bargain away the right to Code-compliant housing is void and unenforceable; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That section 4509.07 of the Columbus City Codes is hereby amended to read as follows:

4509.07 - Retaliatory Action ~~eviction~~.

(a) No owner, or person having control, of any premises regulated by this code shall institute or threaten to institute any action to recover possession of the premises or otherwise ~~willfully~~ cause a tenant to quit a habitation involuntarily, demand an increase in rent from a tenant, decrease services to which a tenant has been entitled, ~~or~~ increase the obligations of a tenant, or refuse to renew the tenant's lease agreement in retaliation against: in retaliation against a tenant's good faith complaint or report of conditions in, or affecting his dwelling unit which might reasonably be believed to constitute a violation of a housing, building, health, or other code or ordinance made to a governmental authority or to the owner.

(1) A tenant's good faith complaint or report of conditions in, or affecting his dwelling unit, which might reasonably be believed to constitute a violation of a housing, building, health, or other code or ordinance made to a governmental authority or to the owner or person having control of the premises; or

(2) The tenant joining with other tenants for the purpose of negotiating or dealing collectively with the owner or person having control of the premises on any of the terms and conditions of a rental agreement.

(b) The City of Columbus, ~~in a criminal case, or the tenant, in a civil case,~~ bears the initial burden of establishing a prima facie case of retaliatory action. In order to establish a prima facie case, the City ~~or the tenant~~ must demonstrate the following:

(1) The victim is a "tenant" as defined by C.C.C. Section 4501.405.

(2) The tenant has engaged in one of the protected activities in C.C.C. Section 4509.07(a).

(3) The owner or person having control of the premises has engaged in at least one of the following prohibited actions:

(i) Increasing rent or any other obligations of the tenant;

(ii) A reduction of any services to the tenant;

(iii) A warning or a threat of eviction, formal or informal;

(iv) Filing of an eviction proceeding ~~within six months after~~ in close temporal proximity to the occurrence of any event referred to in C.C.C. Section 4509.07(a);

(v) Termination or non-renewal of a lease agreement ~~within six months after~~ in close temporal proximity to the occurrence of any event referred to in C.C.C. Section 4509.07(a);

(vi) Landlord trespassing on the property or forcing entry;

(vii) Shutting off utilities or water services;

(viii) Not accepting rent payment;

(ix) Interfering with the tenant's quiet use and enjoyment of the property; or,

(x) Prohibiting the right of access to any part of the premises that the tenant is lawfully entitled to use or occupy.

(c) Once the City ~~or the tenant~~ has established a prima facie case, a rebuttable presumption shifts the burden to the owner, or person having control of the premises, to articulate a legitimate, non-retaliatory reason for taking action against the tenant. To rebut the presumption to any prosecution brought under C.C.C. Section 4509.07(a) ~~or a civil claim or~~

~~defense taken by the tenant~~ that the actions taken by the owner, or person having control of the premises were retaliatory, the accused must demonstrate by preponderance of the evidence either of the following:

- (1) A tenant's violation of the lease agreement between the tenant and the accused; or
- (2) A reason not related to the tenant's good faith complaint or report to the accused or a governmental authority.

If the accused articulates such a reason, the presumption ~~disappears~~ ~~ceases~~ and the City ~~or the tenant~~ bears the burden of proving the proffered reason is merely a pretext for unlawful retaliation.

(d) Any provision of any lease that conflicts with this Section ~~of the Code~~ is void and unenforceable.

~~(E) Penalty. A person who violates this section is guilty of a misdemeanor of the first degree, punishable by \$1,000 fine or up to 180 days in jail.~~

~~(e) C.C.C. Section 4509.07 is not intended to serve as a basis for a civil claim, a counterclaim, or a defense in an eviction proceeding under R.C. Chapters 5321 or R.C. 1923.~~

~~(f) Penalty. A person who violates 4509.07 is guilty of a misdemeanor of the first degree, punishable by \$1,000 fine or up to 180 days in jail.~~

~~Provided, however, that this section shall not apply (a) where it is established that the tenant has complained to a governmental authority or to the owner subsequent to the receipt of a written notice to leave the premises; or (b) where the rent is increased to reflect the cost of improvements installed in or about the premises other than by the occupant or other costs of operation of the premises.~~

~~SECTION 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.~~

SECTION 2. That existing section 4509.07 of the Columbus City Codes is hereby repealed.

SECTION 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.